

PROPOSAL FOR A
MASSACHUSETTS ACCESS TO JUSTICE COMMISSION

A DISCUSSION DRAFT
April 13, 2004

PRESENTED BY
THE MASSACHUSETTS STATE PLANNING BOARD
FOR
CIVIL LEGAL SERVICES

Hon. Herbert P. Wilkins, Chair

Executive Committee

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Introduction

The Massachusetts State Planning Board for Civil Legal Services came into existence a year ago as the result of a recommendation made by participants in a statewide Access to Justice Conference in March 2003. The Conference brought together representatives of all the civil legal services providers in the state and a selection of individuals from important parts of the broader justice system, including the courts, the bar associations and bar foundations, law schools, clients and a number of social service organizations. The Conference provided an opportunity for all of the participants to see the statewide delivery of civil legal services to the poor in its historical context, to consider goals for the delivery system as a whole and to consult as part of the broader justice community about improvements that could be made in the Commonwealth's search for equal justice for the poor.

The State Planning Board, guided by suggestions made at the Conference, formulated the first vision and mission statement for the whole state delivery system. A copy is attached as Appendix One. It also made recommendations to the Legal Services Corporation and the Massachusetts Legal Assistance Corporation about a substantial reconfiguration of the major funded providers of civil legal services. Those recommendations, which both LSC and MLAC accepted, called for better coordination and greater efficiency, a regional perspective in priority setting and leadership, and a maintenance of all local offices to assure the presence of locally-based services.

The State Planning Board has been discussing whether and how a more formally appointed successor organization could replace it and help the state's civil legal services delivery system take the next steps to achieving the vision, mission, core values and core capacities the Board adopted last fall. Of course, Massachusetts already has many effective components to its delivery system. Replacing those components is unnecessary. But our experience during the last year convinces us that there are some specific reasons to create a permanent successor organization with a more formal structure and institutional role. We have prepared a proposal for such an organization and now invite your thoughts about how our draft might be improved.

A permanent Access to Justice Commission will bring the entire justice community together to achieve the ambitious goals and values set forth in the vision statement. Moreover, it will address the ongoing need for regular Justice Conferences that provide a recurring opportunity for a broad range of justice allies to gather together and consider current needs and new directions. A state Access to Justice Commission is an appropriate institution for convening such Justice Conferences and developing statewide, cooperative agendas.

In addition, the Board has proven the value to the equal justice effort of having a separate institution that can hear, consider and ultimately make recommendations back to the state justice community about critical and divisive issues. Reconfiguration and regionalization were such issues, brought to the fore under a mandate of the Legal Services Corporation, and the State Planning Board was an effective way to resolve those issues. There continues to be a need for an

organization in Massachusetts whose recommendations will both be fair and be perceived to be fair. No existing entity has played this role successfully in the past, and the delivery system has sometimes been weakened by the lack of a method for reaching agreements about such issues.

Similarly, the new structure of the civil legal services delivery system separates LSC grantees from MLAC grantees for substantive reasons and then calls upon the resulting set of grantees to work together in four regional delivery systems. In this new structure, none of the major funding sources – MLAC, LSC, MBF or BBF – has a system-wide role. For issues such as vision, mission, new initiatives, changing legal needs, the equitable distribution of resources, oversight, consolidated administration or other central issues, the state currently lacks an accepted leadership forum in which important and difficult issues about the delivery system can be raised for all to consider. We need such a forum to examine major, system-wide changes. The discussion of an Access to Justice Commission is just such an issue.

As part of our exploration, we reviewed some of the voluminous materials produced by state civil legal services “access to justice” entities in such other large states as California, Texas and Washington. Each state seems to have crafted a leadership body for a broadly conceived, statewide effort to pull the components of its diverse and previously inadequately coordinated state justice community into a united, coherent and more effective campaign for justice. In each case, the statewide institution provides a forum for considering difficult issues and setting aside individual interests in the broader cause of obtaining justice for the poor.

In some other states, an access to justice commission has another important role – leading the state’s campaign for public funding. In Massachusetts, however, that function is already performed by the Equal Justice Coalition (EJC). As a result, our proposal supports the continued allocation of that critical function to the EJC. Particularly if the Commission is appointed by the Supreme Judicial Court, it would be wise for the Commission to stay away from even a formal supportive role concerning funding levels in the legislative arena.

Similarly, Massachusetts already has one of the most productive IOLTA programs in the country, which funds a unique and successful grant system administered by MLAC, the MBF and the BBF. The proposal for the Commission does not seek to change that system but, rather, to bring its leaders together for collaborative consideration of how each of their efforts might even better contribute to achieving our shared vision of equal justice for the poor.

On March 23, 2003, the State Planning Board unanimously endorsed, for discussion purposes, the proposal that it recommend to the Justices of the Supreme Judicial Court the creation, by an Order of the Justices, of a Massachusetts Access to Justice Commission. The Massachusetts Legal Assistance Corporation has also endorsed the concept in principle. But both the specifics of the proposal and other ways to achieve the goals of equal justice are still up for discussion.

The Board looks forward to your suggestions about this important next step in our mutual work to assure equal access to justice for the poor in the Commonwealth.

PROPOSAL

Massachusetts needs an Access to Justice Commission, appointed by the Supreme Judicial Court, to provide leadership, vision and coordination to the multitude of organizations and interests involved in assuring access to civil justice for the low-income families and individuals in the Commonwealth. The Commission would have twenty-one uncompensated members representing providers, consumers, the judiciary, the state bar and the Boston bar, the major state funders (MLAC and the two bar foundations), and social service organizations serving the poor.

BACKGROUND

No state can equal the historic commitment of Massachusetts to access to justice for low-income families and individuals. From Reginald Heber Smith, through state and local bar association support for legal aid programs, to the pioneering Action Plan for Legal Services, the innovations of the Volunteer Lawyers Project and the Legal Advocacy and Referral Center, the critical role of the Ad Hoc Committee, Mike Greco's leadership of the Bar Leaders for the Preservation of Legal Services, the unique insights of Gary Bellow and the Legal Services Institute, the creation of our unique Massachusetts Legal Assistance Corporation and the continuing preeminent legal work of Mass Law Reform, Greater Boston Legal Services, the National Consumer Law Center and our many pro bono and staffed programs, Massachusetts has led the nation.

In the past decade, after more than 30 years of struggle over the existence and professional independence of the federally-funded civil legal services program, legal aid in the United States has undergone a fundamental structural change. From a centrally coordinated, national program with a single sense of purpose led by the Legal Services Corporation in Washington and supporting more than 300 local programs scattered across the country to fulfill that mission, the legal aid delivery system has been transformed into fifty state-based delivery systems characterized by unique, state-level organization, coordination, mission and leadership. Today, less than a third of civil legal aid funding in this country comes from Washington, and many of the highest quality legal aid organizations, including our own Greater Boston Legal Services, Neighborhood Legal Services, Legal Assistance Corporation of Central Massachusetts, Southeastern Massachusetts Legal Assistance Corporation, Western Massachusetts Legal Services, Massachusetts Law Reform Institute, Massachusetts Correctional Legal Services and many others, receive no financial support from the federal Legal Services Corporation.

In this process of national change, leadership and planning for the delivery of legal assistance to the poor has shifted from the federal level to the states. Between 1966 and 1980, most new initiatives in the access to justice field emanated from the federal Office of Economic Opportunity's Office of Legal Services and from its successor, the Legal Services Corporation (LSC). Then, between 1980 and 1995, as funding diversified and providers multiplied, leadership in the evolution of effective delivery was scattered among LSC, several national professional associations such as the American Bar Association and the National Legal Aid and Defender Association, the Project Advisory Group and, increasingly, state and local bar associations and

legal aid organizations. In 1995 the first explicit calls were heard for creation of statewide leadership institutions to coordinate the resulting complex state delivery systems. In the last nine years, most states have striven to organize “comprehensive, integrated, high-quality, effective, client-centered, statewide delivery systems” for civil legal assistance to the poor.

In Massachusetts, less than 15% of the financial support for civil legal aid today comes from LSC. The largest annual resource is the Massachusetts Interest on Lawyer Trust Accounts (IOLTA) Committee, with more than \$16 million in 2003 compared to LSC’s \$5 million. The IOLTA funds, distributed by three charitable entities – the Massachusetts Bar Foundation (MBF), the Boston Bar Foundation (BBF) and the unique, state-chartered, Massachusetts Legal Assistance Corporation (MLAC) – are joined by state appropriations to MLAC for legal aid that total an additional \$9 million in Fiscal Year 2004. Despite this critical financial support, a number of the state’s civil legal aid organizations have statewide and even national responsibilities, receive no funding from LSC and, in addition, rely for the majority of their financial support on funding sources other than IOLTA, MLAC and the legislature. These include the National Consumer Law Center, the National Center for Law and Education, the Center for Public Responsibility, the Disability Law Center, the Children’s Law Center, Massachusetts Advocates for Children and the Community Legal Services and Counseling Center.

Services to low-income people to help them with critical life situations in which the law is a central factor are hardly limited to even these legal aid organizations. The Massachusetts Bar Foundation, for example, used IOLTA funds to make targeted grants to at least forty additional organizations to provide legal assistance to the poor during 2004. The courthouse staffs and judges of the Commonwealth offer a wide variety of facilitative services to individuals involved in legal proceedings. The law libraries in the courthouses are expanding their self-help materials. Many organizations offer legal and paralegal assistance to immigrants coping with the complex legal system of their new country. Cultural and religious groups provide advice and support for their members, often in languages other than English. Counseling programs, battered women’s centers, shelters for the homeless, social service organizations focused on the needs of retarded children, disabled people, veterans, the hungry and children, and many others deal with the legal situations of their low-income participants every day.

All of this effort, important as it is, is not nearly enough to assure access to justice for low-income residents of Massachusetts. Last year, MLAC completed a comprehensive study of the legal needs of the poor and found that 68 percent of all low-income households had at least one legal need and that only one in six of these critical legal needs received any legal help at all. Fully a third of the households did nothing to help themselves when faced with at least one serious legal situation.

THE MASSACHUSETTS STATE PLANNING BOARD

During 2003, this diverse, diffuse and complex civil legal aid delivery system took an important step forward. At a conference in March 2003, representatives of many of the larger organizations reviewed the challenges facing the delivery system, and the difficulty the system had in introducing new technology, responding to the changing needs of the poor and reaching agreement about questions of mission and strategy. When working groups at the conference examined the needs of the system from various perspectives, many of them concluded that a unified sense of purpose and a coordinating core institution were missing. They decided that a new, statewide leadership team was a critical missing component in making the system work more effectively and efficiently for all of the Commonwealth's low-income families and individuals. A new "Massachusetts State Planning Board for Civil Legal Services" was created to work on issues of shared vision and structural configuration during the balance of the year.

The State Planning Board adopted a statement of vision, mission, core values and core capacities in September and issued a comprehensive report on configuration in December. Both MLAC and LSC accepted the Board's recommendations, which are now being implemented. A copy of the Vision Statement is attached to this proposal as Appendix One.

In addition, the Board identified several key issues for consideration during 2004. At the head of the list was creating a permanent institution that could continue and enhance the leadership role the board had been playing, but with a broader mandate and full support from the critical provider, bar, judicial and social service institutions that make up the Massachusetts justice community.

THE IDEA OF AN ACCESS TO JUSTICE COMMISSION

In the past decade, as the comprehensive statewide delivery systems have been organized around the nation, more than a dozen states have formed leadership bodies like the proposed Commission.

The Washington State Access to Justice Board, appointed by the state's highest court, coordinates and oversees a statewide delivery system, promotes public, private and volunteer support, develops initiatives to expand resources, promotes improvement in the laws supporting meaningful access to justice, encourages public understanding of civil equal justice, works for better justice system responses to individuals facing special barriers to access to justice and stands at the center of the state's new "Access to Justice Network" which regularly convenes gatherings of the dozens of legal and social service organizations concerned with access to justice. Network participants work in substantive committees to develop initiatives, share information and improve justice throughout the year.

The Texas Access to Justice Commission, also appointed by the state's Supreme Court, develops and implements policy initiatives "designed to expand access to and enhance the

quality of justice in civil legal matters for low-income Texas residents.” Its long-term goal is 100% access to the system of justice. It has adopted a statement of principles for access to justice and articulated core capacities for the delivery system. Working through seven committees with membership drawn from all sectors of the public, non-profit and private worlds, the Commission leads an effort to develop resources, provide public education about access to justice, address systemic issues affecting the poor, enhance the effective use of new technology and improve the effectiveness of assistance to pro se litigants in the courts.

The California Access to Justice Commission, created by a coalition of organizations led by the integrated California State Bar Association, works to increase legislative appropriations for civil legal aid and related providers of legal assistance to the poor, periodically issues comprehensive reports on the status of access to justice in the state, participates in an extensive program of public education about access to justice and works on pro se and pro bono improvement. It coordinates its efforts with the state bar’s Legal Services Outreach project, and with the Legal Services Coordinating Committee (a planning organization).

Similar commissions and boards exist in Maine, Vermont, West Virginia, Louisiana, Colorado, Illinois, Idaho, Missouri, Montana, Puerto Rico and Arkansas.

The State Planning Board’s Executive Committee has been reviewing the situation in Massachusetts and considering what approach to state leadership and coordination for the broad system of assuring access to justice in the Commonwealth would be most likely to succeed for the future. Several important organizational principles have emerged in this discussion.

First, there should be a permanent body that can provide continuity and an established process for use by all participants in the state justice community.

Second, the body should be appointed by the Supreme Judicial Court, which oversees the practice of law and the judicial system that promises equal justice for all.

Third, while the body should be small enough to meet regularly and act effectively, it should be composed of representatives of key constituencies in the struggle for equal justice, including representatives of the major providers themselves, the Massachusetts Bar Foundation, the Boston Bar Foundation and MLAC, the judiciary, the consumers of free legal services, and social service organizations that work for justice for low-income families and individuals.

Fourth, the body’s formal members should be drawn primarily from volunteers rather than compensated staff. While the full-time staff of the many legal aid and other organizations serving the poor are the heart of the delivery system’s success, the new body’s role is leadership from the perspective of the society and all of its justice institutions.

Fifth, a central role for the permanent institution should be to create regular gatherings of the broad network of organizations working to assure access to justice for the purpose of sharing information about the needs of the poor, reviewing the changing condition of the justice system as it relates to the poor, recognizing new approaches for delivering services and determining the most critical aspirations, goals and strategies for use in the delivery system.

THE PROPOSED MASSACHUSETTS ACCESS TO JUSTICE COMMISSION

Purposes of the Access to Justice Commission

The purposes of the Massachusetts Access to Justice Commission will be:

To encourage achievement of the vision, mission, core values and core capacities adopted in September 2003 by the Massachusetts State Planning Board for Civil Legal Services;

To convene periodic Access to Justice Conferences and encourage participation in the conferences by members of a broadly-defined equal justice network so that better coordination of all parts of the effort to produce equal justice for all are more effective, more efficient and more successful;

To develop and maintain a comprehensive understanding of the civil legal services provided to low-income people in the Commonwealth, to promote widespread understanding of civil equal justice, to address laws and regulations that affect meaningful access to justice and to report periodically to the Supreme Judicial Court on the status of access to justice in the Commonwealth;

To provide a neutral forum in which important policy issues affecting access to civil justice for low-income people in the Commonwealth can be discussed and brought to agreement among a broad cross-section of providers, funders, clients, bar leaders and other interested parties;

To consider and make recommendations to affected parties concerning the delivery of civil legal services to the poor when controversial issues require a conclusion that is not emerging by consensus.

Membership

The Commission will have 21 members. Except for the individual appointed by the Executive Directors, no member will be paid staff of MLAC, LSC or their grantees. Terms will be three years, with initial terms staggered.

The Chief Justice for Administration and Management of the Trial Court will appoint 4 members, 2 of whom are sitting or retired Judges, one of whom is a staff member of the Probate Court and one of whom is a staff member of the Housing Court. (4 members)

The Presidents of the Massachusetts Bar Association, the Boston Bar Association, and the three IOLTA charitable entities (the Massachusetts Legal Assistance Corporation, the Massachusetts Bar Foundation and the Boston Bar Foundation) will each appoint 1 member. (5 members)

The Presidents of the Boards of Directors of basic field MLAC and LSC grantees serving each of the four regions in the state, acting together, will each appoint 2 regional members, one of whom will be eligible to be a client of an MLAC or an LSC grantee at the time of his or her appointment. (8 members)

The Executive Directors of the MLAC and LSC grantees, acting together, will appoint 1 member.

These eighteen members will appoint three additional members. Through these appointments the Commission will seek to assure that its membership reflects geographic, gender, racial and ethnic diversity:

2 Members will be representatives of social service organizations, generally non-lawyers,

1 Member will be an at-large member

For the purposes of staggering the initial terms, lots will be drawn within each class of members to determine which member has which term. Initial terms for the classes of members will be:

Judges: 3, 1

Judicial Staff: 2, 1

Massachusetts and Boston Bar Associations: 3, 3

Charitable Entities: 3, 2, 1

Regional general representatives: 3, 2, 2, 1

Regional client representatives: 3, 2, 2, 1

Executive Directors: 2

Social Services Organizations: 3, 1

At-Large Member: 1

Staffing

For its initial operation, the Access to Justice Commission should be staffed by a part-time consultant. The consultant will facilitate Commission meetings and the planning and implementation of Commission activities. Funding for this consultant should be discussed among the three charitable entities.

Administrative support for Commission activities, including an Access to Justice Conference, should be provided by MLAC's administrative staff.

For its longer-term operations, the Commission will determine its staffing needs and work with the charitable entities to secure necessary financial support.

Operations of the Access to Justice Commission

If the Commission existed today, its plans for the next two years might include some of the following operations:

1. Review proposals regarding configuration of statewide and state support entities in the delivery system and make recommendations to MLAC.
2. Review implementation of plans set forth in reconfiguration decisions in 2003 and, through reports from providers, consider whether the results of reorganization are contributing to achievement of the core values and core capacities. For example, administrative collaborations, MLAC structure and function, substantive improvements in the delivery system, and more equitable distribution of resources. If serious difficulties are being encountered, the Commission will consider proposals for improving the outcomes and make recommendations as appropriate.
3. Through a subcommittee working with Executive Directors of providers, the three charitable entities and others, plan and help to implement an Access to Justice Conference in 2005. The Conference will identify major issues facing the state justice community, examine the current state of access to justice in the Commonwealth (perhaps as measured by the core values and core capacities of the Vision Statement) and include substantive workshops on emerging topics affecting access to justice. The Commission will hold a meeting during the Conference.
4. The the Conference, provide an opportunity to form a broad public-private network of organizations dedicated to solving the most critical problems low-income people face, ensuring that they are treated fairly, and making the civil justice system accessible to all. Included might be judges and court personnel, bar associations, law schools, law librarians, the Access to Justice Commission, the Equal Justice Coalition, funders, staffed legal aid providers, volunteer attorney programs, domestic violence advocates, human and

social services providers, paralegals, the dispute resolution community and others. They might discuss and plan to work together on such topics as resources for access to justice, future conferences, communications and public legal education about civil equal justice, improving legal support for access to justice, the legal needs of low-income families and individuals, access to civil justice in the courts and technology.

5. Issue a report to the Supreme Judicial Court in 2005 and periodically thereafter concerning the status of access to justice in the Commonwealth.

6. Develop analyses of the most critical issues arising under the core values and core capacities, working with the Executive Directors, the charitable entities and others, and seek consensus on plans for increasing progress. For example, the Commission might work on developing an approach for greater resource equity between the regions.

Appendix One

MASSACHUSETTS STATE PLANNING BOARD FOR CIVIL LEGAL SERVICES

VISION

Equal justice for all is the primary goal of the Massachusetts civil legal services community. To achieve this goal, the people of the Commonwealth of Massachusetts must have meaningful access to competent legal assistance in important civil matters.

MISSION

The civil legal services community strives to make available to all low-income people, without discrimination, the most services possible. It succeeds when low income individuals, families and communities can obtain justice and when its assistance empowers its clients to define, promote and defend their legitimate interests.

CORE VALUES AND CORE CAPACITIES

In pursuit of these goals, the Massachusetts civil legal services community asserts these core values and will seek to achieve these core capacities:

1. Access to Justice:
Provide access to a full range of civil legal services in a full range of important civil legal matters for eligible clients throughout the Commonwealth in order that they may get justice.
2. Highest Quality:
Provide legal services of the highest quality reasonably achievable, designed to reach the best result possible for every client served while maximizing cost effectiveness of the system as a whole.
3. Systemic Change:
Be a voice and agent on behalf of clients for systemic change which enhances justice for low-income people.

4. Client Empowerment:
Help empower individual and group clients to define, promote and defend their legitimate interests through increased economic and civic power, expanded opportunities for self-determination, improved tools for preventing legal problems, reducing poverty and improving living conditions.
5. Equal Access to Services:
Make accessible and provide services to any low income person regardless of race, sex, national origin, language, citizenship status, community of residence, institutional or community living status, sexual orientation, disability, beliefs or similar characteristics.
6. Respect for Clients:
Treat clients with dignity and respect, and include them to the fullest possible extent in realizing the vision.
7. Effective Priorities:
Develop and follow priority judgments in the use of resources that are based on the relative importance of different legal problems experienced by low-income people, created after consultation with clients and other stakeholders, and are adapted quickly to new or developing trends and changes in the needs of low-income families, individuals and communities.
8. Efficiency:
Be efficient, make the highest and best use of all available human and financial resources, and employ staff that are fairly compensated, diverse, and competent – both professionally and culturally.
9. Adequate Resources:
Obtain public and private resources, including both financial and volunteer resources, adequate to realize the core values and maintain the core capacities.
10. Collaboration:
Collaborate with the larger social justice community from which many low-income individuals and families receive the support they need to obtain legal services in the first place, and with government and the private sector, including, in particular, the organized bar.

Adopted by the Massachusetts State Planning Board for Civil Legal Services on September 24, 2003.